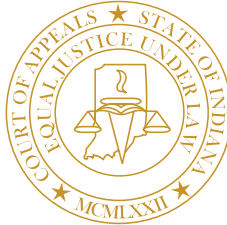


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Trinidad Izayian Cervantes,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

September 19, 2025

Court of Appeals Case No.
25A-CR-169

Appeal from the Lake Superior Court
The Honorable Samuel L. Cappas, Judge
Trial Court Cause No.
45G04-2305-MR-22

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Trinidad Izayian Cervantes appeals his conviction for murder, a felony, following a jury trial. Cervantes presents three issues for our review:

1. Whether the trial court erred when it refused Cervantes's proffered jury instruction on reckless homicide.
2. Whether the State committed prosecutorial misconduct during its cross-examination of Cervantes.
3. Whether the trial court abused its discretion when it allowed a detective to summarize excerpts from recorded phone calls Cervantes had made while he was in jail.

[2] We affirm.

Facts and Procedural History

[3] On May 3, 2023, Rajesh Bhagwandeem was driving a BMW convertible on 165th Street in Hammond. At one point, Bhagwandeem changed lanes once or twice before slowing to a stop. Cervantes was driving a white box truck directly behind Bhagwandeem, and the two were stuck in stop-and-start traffic.

[4] Suddenly, Cervantes pulled up to the rear passenger side of Bhagwandeem's BMW and fired seven shots into the car. Cervantes then swerved in front of the BMW, crossed the double yellow center line, and turned right, in front of traffic, onto Calumet Avenue. Bhagwandeem's BMW rolled to a stop. A police officer and paramedics soon arrived and attempted to resuscitate Bhagwandeem,

who had sustained several gunshot wounds. Bhagwandeem was transported to a local hospital, where he died.

[5] Shortly after the shooting, Cervantes called his girlfriend and told her that “he shot somebody and he was scared.” Tr. Vol. 3, p. 67. Cervantes did not call 9-1-1 to report the shooting, which he later claimed was self-defense. And Cervantes fled to Illinois, where he was apprehended.

[6] The State charged Cervantes with murder, a felony, and filed a firearm enhancement. During Cervantes’s jury trial, Hammond Police Department Detective Michael Elkmann testified regarding phone calls Cervantes had made from jail after his arrest. The State proffered recordings of some of those calls into evidence, and Detective Elkmann gave summaries of portions of the calls because of the poor quality of the recordings. After playing one portion of a recording, the State asked Detective Elkmann to explain what was “going on” in the call, and Cervantes objected. *Id.* at 170. Cervantes argued that Detective Elkmann was essentially translating what Cervantes had said when the jury could hear the call for themselves. The trial court overruled the objection and allowed the detective to summarize each portion of the jail phone calls for the jury.

[7] In his defense, Cervantes testified that he had “quickly changed” lanes directly in front of Bhagwandeem’s BMW and that Bhagwandeem may have perceived that Cervantes had “cut him off” Tr. Vol. 4, p. 18. Cervantes testified that he was then driving next to Bhagwandeem, who was “screaming” at him and

threatening to shoot him. *Id.* at 19. Bhagwandeem allegedly said to Cervantes, “I’ll pop your a**.” *Id.* Cervantes claimed that Bhagwandeem tried to hit Cervantes’s box truck with his BMW. As the two approached a red light at an intersection, Cervantes saw Bhagwandeem appear to reach for something under the car seat. Cervantes testified that he was scared, so he grabbed his gun, closed his eyes, and fired at Bhagwandeem’s car.

[8] During the State’s cross-examination of Cervantes, the prosecutor asked Cervantes whether he knew that Bhagwandeem was expecting a child at the time he was killed. Cervantes replied that he did not know that. The prosecutor then asked, “Do you know that now?” *Id.* at 48. Defense counsel objected, and, during a sidebar, the trial court admonished the prosecutor, calling the question “inappropriate” and a bald attempt to “make the jury feel sorry for the victim.” *Id.* Defense counsel asked that the question and answer be stricken from the record, and the trial court agreed. The trial court immediately instructed the jury to disregard the question. And, during final jury instructions, the trial court instructed the jury in relevant part that, “[o]ccasionally, the Court may strike evidence from the record after you have already seen or heard it. You must not consider such evidence in making your decision.” Appellant’s App. Vol. 2, p. 88. Cervantes did not ask for any additional remedy.

[9] Finally, Cervantes asked the trial court to instruct the jury on both reckless homicide and self-defense. After Cervantes explained his reasons for requesting both instructions, the trial court said, “[w]ell, if he fired shots intentionally to

defend himself, then he couldn't have acted recklessly." Tr. Vol. 4, p. 59. The following colloquy ensued:

[Defense counsel]: If you think those two fly in the face of each other, then I understand your ruling, sir.

THE COURT: I do.

[Defense counsel]: Okay.

THE COURT: So you don't want self-defense and you want reckless, or you . . .

[Defense counsel]: I want self-defense, and I would withdraw my request for reckless homicide then. Do you feel comfortable with that, Mr. Cervantes?

[Cervantes]: Yes, sir.

Id.

[10] The jury found Cervantes guilty of Bhagwandeem's murder, and Cervantes then admitted to using a gun to support the firearm enhancement. The trial court entered judgment and sentenced him to sixty-two years, with three years in community corrections. This appeal ensued.

Discussion and Decision

Issue One: Jury Instruction

[11] Cervantes argues that the trial court erred when it refused his proffered instruction on reckless homicide, a lesser-included offense of murder. During a

criminal trial, either party can request a jury instruction on a lesser included offense. *Webb v. State*, 963 N.E.2d 1103, 1108 (Ind. 2012).

When this occurs, the court must engage in the analysis we set forth in *Wright v. State*, 658 N.E.2d 563, 566-67 (Ind. 1995). First, the court must determine whether the lesser offense is inherently or factually included in the charged offense. *Id.* If it is either, the court must then determine whether “a serious evidentiary dispute” exists between the elements that distinguish the offenses. *Id.* at 567. In other words, there must be sufficient evidence for the jury to find the defendant committed the lesser offense but not the charged offense. *Id.* If a dispute exists, the court must give the instruction. *Id.*

Larkin v. State, 173 N.E.3d 662, 668 (Ind. 2021).

We will review a trial court’s factual finding—where one is made—on the existence or lack of a “serious evidentiary dispute” for an abuse of discretion. This deference reflects and recognizes the trial court’s proximity to the evidence. Nonetheless, *Wright* clearly dictates that reversal is required if the trial court wrongly concludes that no serious evidentiary dispute exists and refuses to give an instruction on a lesser included offense. *If the trial court makes no ruling as to whether a serious evidentiary dispute exists, Wright implicitly requires the reviewing court to make this determination de novo based on its own review of the evidence.*

Champlain v. State, 681 N.E.2d 696, 700 (Ind. 1997) (emphasis added).

[12] Here, when the trial court told Cervantes that he had to choose between a reckless homicide instruction or a self-defense instruction, Cervantes chose self-

defense and withdrew his proffered reckless homicide instruction.¹ Thus, the trial court did not make a ruling on whether a serious evidentiary dispute existed on the mens rea issue that distinguishes reckless homicide from murder.

[R]eckless homicide occurs when the defendant “recklessly” kills another human being, and murder occurs when the killing is done “knowingly” or “intentionally.” *Compare* Ind. Code § 35-42-1-5, with I.C. § 35-42-1-1(1). Reckless conduct is action taken in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct. I.C. § 35-41-2-2(c). By contrast, a person engages in conduct “knowingly” if the person is aware of a “high probability” that he or she is doing so. I.C. § 35-41-2-2(b).

Webb, 963 N.E.2d at 1106 (citations and footnote omitted).

[13] Here, Cervantes argues that the evidence supported a reckless homicide instruction, namely, his own testimony that he closed his eyes and shot in Bhagwandeem’s direction. But we agree with the State that Cervantes indicated his intention to shoot Bhagwandeem by his testimony that he thought Bhagwandeem was “going to shoot” him and that he shot at Bhagwandeem “out of fear.” Tr. Vol. 4, p. 34. Cervantes’s intention to shoot Bhagwandeem at such close range, and the fact that Cervantes fired seven shots at Bhagwandeem, means that there was no serious evidentiary dispute on Cervantes’s mens rea to

¹ The State argues that Cervantes has waived this issue for review by his withdrawal of the proffered instruction. But the trial court explicitly made Cervantes choose between the two instructions. We will consider Cervantes’s argument on the merits.

support the reckless homicide instruction. *See, e.g., Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013) (holding no serious evidentiary dispute on mens rea to support reckless homicide instruction where defendant shot victim twice at close range and continued to shoot him as he ran away). The trial court did not err when it declined to give a reckless homicide instruction.

Issue Two: Prosecutorial Misconduct

- [14] Cervantes next contends that the prosecutor committed misconduct when he asked Cervantes whether he knew that Bhagwandeem was expecting a child at the time of the shooting.

When reviewing a claim of prosecutorial misconduct properly raised in the trial court, we determine “(1) whether misconduct occurred, and if so, (2) ‘whether the misconduct, under all the circumstances, placed the defendant in a position of grave peril to which he or she would not have been subjected’ otherwise.” *Ryan v. State*, 9 N.E.3d 663, 667 (Ind. 2014) (quoting *Cooper v. State*, 854 N.E.2d 831, 835 (Ind. 2006)). “Whether a prosecutor’s argument constitutes misconduct is measured by reference to case law and the Rules of Professional Conduct. The gravity of peril is measured by the probable persuasive effect of the misconduct on the jury’s decision rather than the degree of impropriety of the conduct.” *Id.* (emphasis in original) (quoting *Cooper*, 854 N.E.2d at 835).

Konkle v. State, 253 N.E.3d 1068, 1077 (Ind. 2025).

- [15] The State contends, and we agree, that Cervantes has waived this issue for our review. While Cervantes timely objected and asked the trial court to strike the question and answer from the record, the trial court granted the motion to

strike, admonished the jury to disregard the question and answer, and later instructed the jury to disregard any evidence stricken from the record. As our Supreme Court recently reiterated, “to preserve the issue [of alleged prosecutorial misconduct] for appeal following a sustained objection, the defendant must request an admonishment of the jury, *and if further relief is required, move for a mistrial.*” *Id.* at 1082 (emphasis added; original emphasis removed). Cervantes did not request a mistrial, and he has not preserved this issue for our review.

Issue Three: Testimony Regarding Jail Phone Calls

[16] Finally, Cervantes argues that the trial court abused its discretion when it allowed Detective Elkmann to summarize statements Cervantes had made during phone calls while he was in an Illinois jail after his arrest. The trial court has broad discretion to rule on the admissibility of evidence. *Thomas v. State*, 81 N.E.3d 621, 624 (Ind. 2017). Rulings on the admissibility of evidence are reviewed for an abuse of discretion and ordinarily reversed only when admission is clearly against the logic and effect of the facts and circumstances. *Id.*

[17] Here, the State admitted into evidence recorded excerpts from two calls Cervantes had made from jail after his arrest in Illinois. The audio quality of the recordings is poor, but, in our review of the recordings, we can make out what Cervantes is saying. At trial, however, the State played the recordings in the courtroom, and, without close listening, the jury may have had difficulty making out what Cervantes is saying. After the State played the first excerpt,

the prosecutor said, “[n]ow, Detective, I’m stopping the audio at 15:26, I know it’s difficult to hear the Cook County phone calls because of the system they use, but can you tell the jury what is going on right there?” Tr. Vol. 3, p. 170.

[18] Before Detective Elkmann answered, Cervantes objected and stated that it was inappropriate for Detective Elkmann to “essentially . . . translate for the jury what he thinks that he heard.” *Id.* Cervantes argued that the jurors should “hear and decide for themselves what’s said.” *Id.* The State replayed the first excerpt and argued that “it comes through and you can hear what he’s saying, I believe. Personally, I don’t see an issue with Detective Elkmann just repeating it” *Id.* at 171. The trial court overruled Cervantes’s objection. With each subsequent excerpt, Cervantes repeated his objection, and the trial court overruled each objection.

[19] With regard to the first excerpt, Detective Elkmann testified that Cervantes was “[h]aving a discussion about Mr. Cervantes being transported to Indiana and Mr. Cervantes indicated that if he was released, he’d go to Texas.” *Id.* at 171-72. For the second excerpt, Detective Elkmann testified that Cervantes “was indicating that he could flee to another state” and that there would be a warrant for his arrest in Indiana. *Id.* at 172. For the third excerpt, Detective Elkmann testified that Cervantes had stated that he “did not start” the confrontation with Bhagwandeem and that, “even if it wasn’t self-defense, he would still get a bond.” *Id.* at 173. Each of those summaries is entirely consistent with Cervantes’s statements in the recorded calls, and, thus, we cannot say that the trial court abused its discretion when it permitted the detective’s summaries.

[20] Still, Cervantes argues that, because the quality of the recordings is good enough to hear his statements, the trial court should have excluded the detective's summaries. In support, Cervantes cites *Pettit v. State*, 396 N.E.2d 126 (Ind. 1979). In *Pettit*, the Court held that an audio recording shall not be admitted if it lacks “such clarity as to be intelligible and enlightening to the jury.” *Id.* at 129 (quoting *Lamar v. State*, 258 Ind. 504, 282 N.E.2d 795, 800 (Ind. 1972)). Cervantes argues here that, “[c]onversely, if the audio is of sufficient clarity that the jury can follow its contents, no interpretation by a law enforcement witness is needed.” Appellant's Br. at 21. We decline Cervantes's invitation to extend the holding in *Pettit*. Indeed, we do not agree with Cervantes's contention that Detective Elkmann “interpreted” Cervantes's statements. And whether the summaries were needed is a distinct question from whether the trial court abused its discretion in their admission.

[21] Cervantes also contends that, while transcripts of audio recordings are admissible at trial “for juror understanding of taped statements,” the transcripts must be accurate and “the trial court must instruct the jury that the transcript should not be given independent weight and the jury should rely on what they hear and not what they read if there is a difference.” Appellant's Br. at 22 (citing *Bryan v. State*, 450 N.E.2d 53, 59 (Ind. 1983)). Cervantes argues that this rule should apply here by analogy, and he complains that the trial court did not admonish the jury not to consider the summaries as substantive evidence. But, as explained above, Cervantes has not shown any differences between the detective's summaries and his recorded statements, and, moreover, he did not

request an admonishment that the jury not consider the summaries as substantive evidence. Accordingly, Cervantes has waived this argument. *See Small v. State*, 736 N.E.2d 742, 746 (Ind. 2000) (holding defendant waived claim of error based on lack of admonishment in admission of evidence where he failed to request one).

[22] In sum, Cervantes has not demonstrated that the trial court abused its discretion on this issue. Detective Elkmann's testimony is entirely consistent with Cervantes's statements in the phone calls. Detective Elkmann did not add any spin or otherwise alter the substance of what Cervantes had said in the calls. Indeed, while Cervantes alleges that Detective Elkmann added his own spin, Cervantes does not direct us to any substantive discrepancies between Detective Elkmann's testimony and his own statements in the calls. Thus, we cannot say that the trial court erred in the admission of the evidence.

Conclusion

[23] For all these reasons, we affirm Cervantes's murder conviction.

[24] Affirmed.

May, J., and Bradford, J., concur.

ATTORNEY FOR APPELLANT

R. Brian Woodward
Office of the Lake County Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana